

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN**

In the Matter of

**Mt. Olive Baptist Church, Inc.,

Debtor.**

**Case No. 17-26930-gmh
Chapter 11**

**MOTION FOR AN ORDER (I) AUTHORIZING INTERIM APPROVAL OF THE USE
OF CASH COLLATERAL ON AN EXPEDITED, EMERGENCY BASIS PURSUANT TO
11 U.S.C. § 363, AND (II) GRANTING ADEQUATE PROTECTION PURSUANT TO 11
U.S.C. §§ 361 AND 363**

The above-captioned debtor, Mt. Olive Baptist Church, Inc. (“Mt. Olive” or the “Debtor”) moves the Court for *Interim* approval of the use of cash collateral of First Citizens Bank & Trust Company (“First Citizens”) pursuant to 11 U.S.C. § 363(c)(2)(B) and (3) and Rule 4001(b) and (d) of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), with a hearing on Mt. Olive’s request for interim approval being heard on an expedited, emergency basis on *July 21, 2017*.

In support of its motion, Mt. Olive states:

Jurisdiction

1. On July 14, 2017, Mt. Olive filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Mt. Olive is continuing to operate the church and manage its affairs as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

2. The Court has jurisdiction over this matter pursuant to §§ 157 and 1334, and the order of reference filed in this District entered pursuant to §157(a).

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3. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (M) as a matter with respect to the administration of the debtor's estate and the use of cash collateral.

Background of the Debtor

4. Mt. Olive was established in Milwaukee in 1936. It eventually incorporated in the State of Wisconsin as a non-profit corporation, and operates exclusively for religious, charitable, and educational purposes.

5. In its 80 years of existence, Mt. Olive has only had five pastors, including its current pastor, John Patterson. Mr. Patterson's father, Genora, served as the fourth.

6. The church moved to its current location on 36th street in Milwaukee in 1976. Until 2007, the church carried no debt. However, due to the burgeoning congregation, the original building could no longer comfortably hold everyone that wanted to attend church services. Mt. Olive decided to take out a construction loan to increase the size of the building in order to better accommodate its growing congregation.

7. As Mt. Olive soon discovered, it is difficult for small traditionally black churches to obtain loans via the ordinary commercial lending channels. Most banks will not lend to small churches like Mt. Olive. However, at the time, it was well known within the Milwaukee Baptist church community that North Milwaukee State Bank ("NMSB") was a willing lender for these types of churches. Mt. Olive reached out to NMSB, which approved a construction loan for the addition to the building.

8. A July 2007 appraisal ordered by NMSB valued the church at \$1,575,000. Based on this appraisal, NMSB provided a \$1,317,350 construction loan to Mt. Olive. Mt. Olive did not question the value of the appraisal or the terms of the loan. Its representatives at the time were not especially financially sophisticated, and they believed that NMSB was acting in the church's best interests.

9. However, in January of 2014, NMSB obtained a new appraisal from a different appraiser that valued the property at only \$430,000, less than a third of the 2007 appraised value. Even in light of the 2008 recession and the corresponding drop in real estate prices, a decrease in value this significant appears to show that the 2007 appraisal was grossly over-stated.

10. Despite discovering that overnight the church property was now almost a million dollars underwater, the church continued to diligently make all of its payments in a timely manner. It also commenced negotiations with NMSB to refinance its loan, either with NMSB or with another lender.

11. In March of 2016, in the midst of these negotiations, NMSB was shut down by federal regulators. Many of its assets, including the loan with Mt. Olive, were assigned by the FDIC to First Citizens.

12. Subsequent to the assignment, Mt. Olive continued to negotiate with First Citizens. Mt. Olive knew that the loan with First Citizens matured in December of 2016, and First Citizens indicated it was not interested in negotiating or reducing the loan. In an effort to avoid a bankruptcy filing, Mt. Olive obtained refinancing proposals from two different lenders that would have provided First Citizens with a “take-out” amount well above the current fair market value of the property.

13. Unfortunately, these negotiations were to no avail; First Citizens filed a foreclosure complaint in state court in January of 2017. Upon information and belief, First Citizens is operating under a “loss-share” agreement with the FDIC. Typically, in order to induce banks like First Citizens to agree to take over under-performing or under-secured loans from failing banks, the FDIC will agree to reimburse the assignee bank for a certain percentage (usually around 80%) of any loss it incurs on the loan.

14. Accordingly, these negotiations were futile, as First Citizens is incentivized (and,

likely, contractually obligated with the FDIC) to proceed to a foreclosure sale in order to receive its loss-share reimbursement. Facing a foreclosure that would result in the loss of the building that is integral to providing the church's services to the congregation and the surrounding community, Mt. Olive was forced to file this chapter 11 case.

Summary of Pre-Petition Credit Facilities with First Citizens

15. Mt. Olive is indebted to First Citizens under the terms of a Promissory Note dated December 9, 2013, in the original principal amount of \$1,190,957.30 (the "Note"). As of May 25, 2017, there is due and owing on the Note principal of \$1,126,407.46, accrued interest of \$36,986.57, and late charges of \$25, for a total due on that date of \$1,163,419.03, with interest accruing per diem at the rate of \$187.73, plus fees and costs including attorneys' fees incurred by First Citizens.

16. The Note is secured by a commercial loan agreement dated December 9, 2013, and a mortgage dated on September 11, 2017, and recorded on September 19, 2007 as document no. 09494880.

First Citizens' Security Interests Are Perfected (But Rights Are Reserved)

17. The Debtor's attorneys have not had an opportunity review all of the documentation for First Citizens' security interests. However, after reviewing the information that is publically available online, it appears that the liens on the Debtor's cash collateral are perfected.

Proposed Adequate Protection

18. The adequate protection proposed by the Debtor is summarized below:

- i. *Budget.* The Debtor has agreed that, absent further order of this Court, cash collateral used will be used in accordance with terms of the budget attached to proposed order approving this motion as Exhibit A ("Initial Budget"). Cash collateral shall be used only

for payment of the amount, which may vary up to 125% of the amount stated, and type of expenses set out in the Initial Budget.

ii. *Adequate Protection.* As adequate protection to First Citizens, the Debtor shall grant First Citizens a replacement lien in an amount equal to and in the same collateral and priority as it had as of the Petition Date (“DIP Collateral”) to the extent that First Citizens had a properly perfected security interest in cash collateral as of the Petition Date. The Debtor shall also make cash payments of \$5,800 (equal to an interest-only payment at the 6% contract interest rate based on First Citizens’ estimated claim) to First Citizens on or before the 1st day of each month, commencing on August 1, 2017.

iii. *Reporting Requirements.* The Debtor shall provide reports of its receipts and disbursements once a month consistent with the Debtor’s monthly operating report requirements for its chapter 11 case, inclusive of monthly balance sheets and income statements.

iv. *Maintenance of Collateral.* The Debtor shall continue to maintain and insure First Citizens’ collateral consistent with the requirements in the loan documents between the Debtor and First Citizens.

vi. *DIP Accounts.* The Debtor shall maintain a debtor-in-possession account (“DIP Account”) to deposit all post-petition revenue and pay all post-petition expenses.

Request for Expedited Hearing

19. The Debtor requests that the preliminary hearing on its motion for interim approval of the use of cash collateral be heard on an expedited basis, on ***July 21, 2017***. Otherwise, the Debtor will suffer immediate and irreparable harm. The Debtor will need cash to pay employees and pay other expenses necessary to continue operating the church.

Notice

18. No trustee, examiner or creditors’ committee has been appointed in the Debtor’s

chapter 11 case. Notice of this motion has been given to (i) the United States Trustee for the Eastern District of Wisconsin; (ii) the creditors identified on the Debtor's list of its twenty largest unsecured creditors; and (iii) parties with an interest in cash collateral.

Conclusion

WHEREFORE, the Debtor requests interim approval of cash collateral use on the terms stated in this motion, and other relief as is just.

Dated: July 14, 2017.

/s/ David J. Espin
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